



# Department of Environmental Protection

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## **Enforcement Discretion Directives Related to Implementation of the Massachusetts Asbestos Regulation**

**January 4, 2016**

### **Introduction**

The Massachusetts Department of Environmental Protection (MassDEP) has identified some specific situations in which certain aspects of 310 CMR 7.15 as amended in June 2014 need to be revised so that the regulation can be feasibly implemented. Until an amended regulation is promulgated, MassDEP has issued the following enforcement discretion directives that apply to the specific situations or materials identified.

Nothing in these Enforcement Discretion Directives shall be construed in any way to affect MassDEP's legal rights pursuant to M.G.L. c. 111, § 142A, et. seq. and 310 CMR 7.15. These Directives do not constitute "final agency action," and are not "regulation" as that term is used in M.G.L. c.30A. These Directives may not be relied upon to create rights, duties, obligations or defenses, implied or otherwise, enforceable by any party in any administrative proceeding with the Commonwealth. In addition, these Enforcement Discretion Directives do not exempt any person from complying with the other requirements in 310 CMR 7.15 or any other applicable local, state or federal law, including but not limited to the Massachusetts Department of Labor Standard (DLS)'s asbestos regulations at 453 CMR 6.00.

If you have any questions about the scope of any of these Enforcement Discretion Directives, please contact Jenny Outman in MassDEP's Office of General Counsel (email: [jenny.outman@state.ma.us](mailto:jenny.outman@state.ma.us), telephone: 617/654-6586) or Michael Elliott in MassDEP's Bureau of Air and Waste (email: [michael.elliott@state.ma.us](mailto:michael.elliott@state.ma.us), telephone: 617/292-5575).

### **1. Conditional Asbestos Enforcement Discretion Directive for Work Involving Asbestos-Cement Pipe (May 22, 2015)**

Asbestos cement pipes often are found in underground utility conduits and municipal water, sewer and drainage systems. Asbestos cement pipes buried below ground are considered non-friable if they are in good condition. It should be noted that active asbestos cement pipe that is exposed and is not intended

to be replaced or removed and is not disturbed by repair or replacement activities may remain in place and be backfilled. MassDEP published guidance in June 2011 that prescribed work practices for projects involving repair or replacement of underground asbestos-cement pipe. This guidance was updated in May 2015 to reflect regulation amendments that were promulgated in June 2014.

This Enforcement Discretion Directive supports section III of the updated Guidance. The updated Guidance provides a form that should be used for documenting this survey. This Enforcement Discretion allows the “pre-abatement” survey required by 310 CMR 7.15(4) to be performed by a worker who has completed a DLS-approved training course designed specifically for work on asbestos-cement pipe. Directive also allows the “post-abatement” visual inspection required by 310 CMR 7.15(8) to be performed by a worker who has completed the same training course. This Enforcement Discretion Directive also states that the establishment of full containment and implementation of work area ventilation systems are not required for the repair or replacement of underground asbestos-cement pipe. The updated Guidance provides forms for documenting the survey and the visual inspection and identifies work practices that are specific for work in pipe trenches (including the use of polyethylene tarps in trench bottoms), and does not require either full containment of the work area or work area ventilation, which would be impractical in the trenches in which asbestos-cement pipes are usually repaired or replaced.

A person who conducts the removal and associated abatement of asbestos cement pipe in accordance with the provisions of “Asbestos Cement Pipe Guidance Document and Conditional Enforcement Discretion”<sup>1</sup> would not be subject to enforcement by MassDEP for violation of the following requirements of 310 CMR 7.15:

- The use of a DLS-certified asbestos inspector to prepare a written survey report that documents the types, amounts, condition and location of all ACM present in a utility conduit that will be subject to demolition or removal of cement pipe as required by 310 CMR 7.15(4);
- Establishment of full containment in accordance with “Work Area Preparation Requirements” 310 CMR 7.15 (7)(c);
- Implementation of air cleaning in accordance with “Work Area Ventilation System” requirements 310 CMR 7.15 (7)(e); and
- The use of a DLS-certified asbestos project monitor to perform a post-abatement visual inspection in accordance with 310 CMR 7.15(8).

## **2. Asbestos Enforcement Discretion Directive for the Use of Non-Licensed Asbestos Contractors as Allowed by the MA Department of Labor Standards (December 21, 2015)**

MassDEP is exercising enforcement discretion to allow the use of non-licensed asbestos contractors in asbestos abatement activities as allowed by the Department of Labor Services (DLS) at 453 CMR 6.13(1)(a), 6.13(2)(a)1., 3. and 5. and 6.14(1)(a).

M.G.L. c. 149, §6B gives the Commissioner of DLS the authority to license persons, firms, corporations and entities that engage in work with asbestos. Specific requirements for licensure and training are set

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<sup>1</sup> This Guidance document is published at: <http://www.mass.gov/eea/docs/dep/air/laws/acpguid.pdf>

forth in DLS's regulations at 453 CMR 6.00. DLS's regulation provides exemptions from using a licensed contractor on certain work involving friable and non-friable asbestos.

MassDEP's asbestos regulations at 310 CMR 7.15(7)(b) require the use of DLS licensed contractors for asbestos abatement activities, except "as allowed by 453 CMR 6.14(1)(a)". This paragraph of DLS's regulation covers "[p]ersons, firms, corporations or other entities" using their "own regular employees or Responsible Persons" for work on friable material greater than 3 square or 3 linear feet". Although DLS allows the use of non-licensed contractors for other asbestos work, this is the only DLS exemption that MassDEP cites in its regulations. Since DLS is the agency that licenses asbestos contractors, MassDEP will defer to DLS to determine what asbestos abatement activities require work by a DLS licensed contractor.

In the next few months, MassDEP intends to propose changes to its asbestos regulations at 310 CMR 7.15 that will include all the exemptions from the use of licensed contractors that are allowed by DLS in 453 CMR 6.13(1)(a), 6.13(2)(a) 1., 3. and 5. and 6.14(1)(a). In anticipation of proposing that regulatory change, MassDEP is exercising its enforcement discretion to allow the use of non-licensed contractors pursuant to 453 CMR 6.13(1)(a), 6.13(2)(a) 1., 3. and 5. and 6.14(1)(a), provided that the person conducting the asbestos abatement activity has the requisite certification and training required by 453 CMR 6.00 and complies with all the applicable requirements of 310 CMR 7.15 and 453 CMR 6.00.



## MassDEP's Revised Asbestos Regulation

The Massachusetts Department of Environmental Protection (MassDEP) has amended the Massachusetts Air Pollution Regulation (310 CMR 7.00 and 310 CMR 7.15) to update and streamline the environmental rules for managing asbestos in demolition and renovation projects. The revised regulations become effective on June 20, 2014. This fact sheet describes significant changes in the regulation.

**What Remains the Same?** The fundamental structure and conditions for notification and implementation of asbestos abatements in Massachusetts demolition and renovation projects has not changed.

### What's New/Different?

- 1. Pre-demolition/renovation survey:** MassDEP's regulation requires a survey of the area to be affected by a demolition or renovation project to be conducted before the project starts, to identify all material containing any amount of asbestos that is present in the facility or facility component to be demolished or renovated. Please note that there is a similar requirement in the federal Asbestos National Emission Standards for Hazardous Pollutants (Asbestos NESHAP). [Section 4 of the final regulation]
- 2. New Notification Exemptions:** Certain types of very small asbestos abatement projects have been exempted from the requirement to notify MassDEP and the Massachusetts Department of Labor Standards (MA DLS) 10 days before work starts [Section (6)(f) of the final regulation]. These are:
  - Removal or disturbance of 100 square feet or less of exterior asbestos-containing cementitious shingles, siding and panels (but the regulation establishes specific work practices for these materials that must be followed to ensure that they will not cause or create a condition of air pollution).
  - Incidental maintenance projects involving 100 square feet or less of asbestos-containing floor tiles and related asbestos-containing mastics, or 32 square feet or less of asbestos-containing gypsum wallboard and/or joint compound.
  - Abatements of non-friable materials that are conducted by the owner of a single family residence, who also lives at that residence, as long as the non-friable material does not become friable and the project does not involve removing or disturbing more than 100 square feet of exterior asbestos-containing cementitious shingles, siding and panels.
- 3. Post-abatement visual inspections:** To ensure that asbestos abatements are complete, a requirement for a visual inspection of the work area has been incorporated into the final regulation. This requirement was described in the draft regulation as "Clearance Monitoring", but was changed to a visual inspection in the final regulation to avoid a potential duplication of MA DLS's clearance monitoring requirement, which remains in effect in 453 CMR 6.15(5)(g). [Section 8 of the final regulation].

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Department of  
Environmental Protection  
David W. Cash, Commissioner

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4. **Work practices have been moved from MassDEP policies into the regulation:** Specific requirements for abating common types of asbestos-containing material that were previously established in MassDEP policies have been incorporated into the final regulation:

- Asphaltic roofing and siding [Section 10 of the final regulation],
- Window painting and repair that will disturb asbestos-containing glazing and/or caulking compounds [Section 11 of the final regulation],
- Exterior asbestos-containing cement shingles, siding, and panels [Section 12 of the final regulation], and
- Incidental Maintenance Projects involving asbestos-containing floor tiles, gypsum wallboard and joint compound [Section 13 of the final regulation].

5. **New permit for “Non-Traditional Asbestos Abatement Work Practice Approvals”:** A new permit has been established for “Non-Traditional Asbestos Abatement Work Practice Approvals,” which have previously been informally submitted as “alternative work practice approvals.” [Section 4 of the final regulation] This section lists the situations for which applications may be submitted, and makes MassDEP’s regulation consistent with the federal Asbestos NESHAP. The situations for which applications can be submitted to MassDEP are:

- Demolition of a facility under an order of a state or local government agency issued because the facility is structurally unsound and in danger of imminent collapse;
- Where ACM or ACWM was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, the material cannot be safely removed;
- Asbestos abatement activities that are conducted as part of an emergency renovation operation;
- Asbestos abatement activities that are conducted to clean up and decontaminate a facility or portion of a facility as a result of:
  - asbestos abatement activities not conducted in compliance with 310 CMR 7.15, or
  - ACM deterioration that, if not immediately attended to, presents a safety or public health hazard;
- In a facility that is being renovated, where wetting would unavoidably damage equipment or present a safety hazard; or
- Bulk loading ACM and/or ACWM.

A form that must accompany applications for Non-Traditional Work Practice Approvals is available on MassDEP’s web site (See “For More Information” below for a link).

6. **New Massachusetts Waste Shipment Record Forms:** Waste Shipment Records are required to accompany each shipment of Asbestos-Containing Waste Material from the site where the waste is generated to a disposal facility. The form needs to be signed by the generator, each transporter (if there is more than one), and the waste disposal facility operator, with a copy then returned to the generator as proof that the shipment arrived at the facility. If the generator does not receive a copy of the completed Waste Shipment Record within 45 days after the shipment left the site where it was generated, an investigation needs to be made into the status of the shipment and a report

filed with MassDEP. MassDEP has developed a template for Waste Shipment Records which can be used to produce four-part forms (please note that MassDEP will not make four-part forms available). See "For More Information" below for a link to the template. Haulers and disposal facilities can use up their supplies of their old forms, but must start using the new MassDEP form by January 1, 2015.

7. **New record-keeping requirements:** New record-keeping requirements have been established for pre-construction survey reports and for Asbestos-Containing Waste Material Waste Shipment Records.

**Fee Changes (effective for submittals made on and after July 24, 2014):**

- New fee for revising Asbestos Notification Forms (ANF-001/AQ-04 Form): \$35
- New fee for revising a Construction/Demolition Notification (AQ-06 Form): \$35
- Application for an Asbestos Blanket Notification (AQ-05 Form): \$200
  - Asbestos Notification Forms (ANF-001, AQ-04) submitted for each project under a Blanket Notification: \$100
- Application for Non-Traditional Asbestos Abatement Work Practice Approval: \$600

**For More Information:**

- Review the final regulation and Response to Comments received about the draft regulation:  
<http://www.mass.gov/eea/agencies/massdep/air/regulations/310-cmr-7-00-air-pollution-control-regulation.html#3>
- Asbestos Forms (including the Application for Non-Traditional Asbestos Abatement Work Practice Approval and the Waste Shipment Record template):  
<http://www.mass.gov/eea/agencies/massdep/air/programs/asbestos.html#2>
- Contact the MassDEP Asbestos Program in the region that covers the municipality in which your project is located:
  - Central Regional Office: 508/792-7683
  - Northeast Regional Office: 978/694-3200
  - Southeast Regional Office: 508/946-2714
  - Western Regional Office: 413/755-1100
  - Find Your Regional Office:  
<http://www.mass.gov/eea/agencies/massdep/about/contacts/>

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## **FAQs About the MassDEP Revised Asbestos Regulations**

### **Applicable to Schools Undergoing Renovation or Performing Maintenance Work**

*NOTE: This is an abridged document compiled from the information supplied by the MassDEP in its “Frequently Asked Questions About the Revised MassDEP Asbestos Regulations (310 CMR 7.15)”, dated June 19, 2015. The changes to these regulations may impact schools within the Commonwealth and their compliance with the Asbestos Hazard Emergency Response Act (AHERA). DLS has selected information on topics that may have a direct effect on schools when maintenance work is performed, when renovations are planned and when asbestos containing materials are removed. DLS has provided a summary of each item as it would relate to AHERA compliance. For further clarification of the MassDEP regulations, or for information regarding specific circumstances, schools should contact a regional MassDEP office. For the complete document, and other MassDEP guidance documents, visit <http://www.mass.gov/eea/agencies/massdep/air/programs/asbestos.html>.*

### **Floor Tile.**

#### **1. Is the use of abrasive blasting to remove floor tile and related mastics permitted under the new regulations?**

- Abrasive blasting may be used to remove asbestos-containing floor tile and mastics in projects that involve greater than 100 sq. ft. of floor tile. However, the work must be conducted under full containment and must either (1) use traditional wet removal methods in compliance with “Specific Asbestos Abatement Work Practice Standards” [310 CMR 7.15 (7)]; or (2) if wet removal methods cannot be used, then the owner or contractor must obtain a MassDEP Non-Traditional Asbestos Abatement Work Practice Approval [310 CMR 7.15 (14)] that specifically permits the use of dry abrasive blasting at that location.
  
- Abrasive blasting may NOT be used to remove asbestos-containing floor tile and mastics if done as Incidental Maintenance [310 CMR 7.15 (13)], which is defined as a project or work involving 100 square feet or less of asbestos-containing floor tile and related asbestos-containing mastics. Please note that in addition to the prohibition on abrasive blasting, the Incidental Maintenance work practice standard in the regulation also prohibits sanding, dry-sweeping, dry-scraping, drilling, sawing, mechanical chipping or pulverization during removal work. Please see the “Floor Tile” Section Question 2 below for more information on incidental Maintenance.

*Summary: You cannot use abrasive blasting to remove floor tiles and mastic when quantities are 100 square feet or less, as these are considered “Incidental Maintenance”. You would record this work in the asbestos management plan as “Operations & Maintenance Activity”. You may use abrasive blasting to remove quantities of floor tiles and mastic that are greater than 100 square feet, provided the work is done within a full containment, using wet methods or specific methods approved by MassDEP in a Non Traditional Work Practice. The Project Design*

*needs to specify the work practices, including non-traditional work practices, that will be used at a particular job.*

## **2. The specific requirements for removal of asbestos floor tile as an Incidental Maintenance Project indicate that floor tiles must be removed in a manner which minimizes breakage. Can you clarify “minimizes breakage”?**

- The goal is to remove the floor tiles in an intact state to the maximum extent feasible. [310 CMR 7.15 (13)(b)2.]
- While the regulation does not define “minimal breakage”, the specific work practices prescribed in the “Incidental Maintenance” section are designed to limit breakage as floor tiles are removed:
  - Use hand scrapers or similar hand-held tools to pry up individual floor tiles. The use of tools that are likely to break floor tiles—e.g., spud bars or ice breakers—is prohibited.
  - Where tiles do not readily release from the underlying mastic, you can strike the removal tool with a hammer to facilitate the tile’s release.
  - Surfaces may be heated with a heat gun or other heat source to soften the adhesive and facilitate tile removal.

*Summary: Every possible precaution should be used to prevent breaking the floor tiles. The methods listed above are designed to limit the breakage, and therefore, limit the creation of dust during the removal. At any point when the Maintenance Project begins to create dust due to continual breakage or results in the creation of multiple or small pieces, work should cease and additional preventive measures implemented. Any removal conducted as Maintenance work must be recorded in the asbestos management plan as Operations & Maintenance Activity.*

## **3. How is a single 9” x 9” vinyl asbestos floor tile that “pops” up and needs to be removed regulated in Massachusetts?**

- You do not need to notify the MassDEP of the removal of one 9” x 9” asbestos containing tile [Notification Exemption for Incidental Maintenance Projects or Work, 310 CMR 7.15 (6)(f)2.], as long as you follow the work practices described in the response to the “Floor Tile” Question 2 above.
- Intact vinyl asbestos tiles (VAT) can be disposed of at any Massachusetts landfill permitted by MassDEP to accept solid waste, or at any out-of-state landfill permitted to accept solid waste from the environmental permitting authority in the state in which the landfill located.

- Non-intact VAT (i.e. broken, shattered, crumbled, pulverized or otherwise deteriorated) and any other types of asbestos-containing floor tile debris must be managed as Asbestos-Containing Waste Material (ACWM). Requirements for managing ACWM include: packaging [310 CMR 7.15 (15)], transport [310 CMR 7.15 (16)], storage and disposal [310 CMR 7.15 (17)], and waste shipment records and reports [310 CMR 7.15 (18)].

*Summary: If the floor tiles are intact (not broken) as a result of “popping up”, they can be disposed of in any landfill that accepts solid waste (as opposed to special waste). However, if the floor tiles are broken, crumbled, or have resulted in the production of dust, the floor tile and associated debris must be properly containerized, labeled, and disposed in a landfill that accepts “special waste”. Any floor tile removed from a school must be documented in the management plan as Operations & Maintenance activity, including the amount and location of the asbestos containing material. For material that is disposed of as “special waste” the school is required to maintain a waste shipment record in the management plan.*

**4. How does the quantity of “related asbestos-containing mastics” relate to the notification exemption for projects involving 100 square feet or less of asbestos-containing floor tile and related mastics? Does the exemption cover 100 square feet of floor tile plus the related mastics, or is it limited to 50 square feet of floor tile if the tile is completely underlain with asbestos-containing mastic?**

- *Incidental Maintenance* for asbestos-containing floor tile is defined as the “removal or disturbance of 100 square feet or less of asbestos-containing floor tile and related asbestos-containing mastics.” This exemption is based on the amount of work area disturbed, not the sum of the individual layers (tile and mastic). So, a project that removes a total area of 100 square feet or less of floor tile along with its related mastic compounds is eligible for the incidental maintenance notification exemption [310 CMR 7.15 (6) (f) 2.].

*Summary: The exemption for 100 square feet of floor tile includes the associated mastic. All work performed as Incidental Maintenance must be recorded in the asbestos management plan.*

## Survey Requirements.

### 1. What do I need to do to satisfy the asbestos survey requirement before demolishing or renovating a facility or portion of a facility?

- Before starting any demolition or renovation activities at a facility that contains Suspect ACM, you must hire an asbestos inspector who has been certified by DLS to conduct a thorough inspection of the facility, or that portion of the facility where the demolition or renovation will occur, to identify the presence, location and quantity of any ACM or Suspect ACM.
- The inspector will take samples of Suspect ACM and send them to a laboratory that has been certified by DLS for analysis. If you do not want to take samples, you can presume that Suspect ACM contains 1% or more asbestos and handle the material as ACM.
- To the extent that the survey report relies on sampling and analysis to verify the presence, location and quantity of ACM, the analysis should follow protocols established by the U.S. EPA in a report entitled “*Test Method: Method for the Determination of Asbestos in Bulk Building Materials*” (EPA/600/R-93/116, July 1993). (Note: DLS establishes certification requirements for laboratories that conduct analysis of air and bulk samples in connection with asbestos-related activities [a list of DLS-certified laboratories is available at <http://www.mass.gov/lwd/labor-standards/asbestosprogram/license-lists/>].)
- The results of the inspection must be memorialized in a written asbestos survey report. The report must include: an inventory of locations, dates and type of materials sampled; analytical results (which usually include the analytical methods used); the name(s) of the person(s) who provided the analytical services; and a site map, diagram or written description of locations and quantities of identified ACM.
- The owner/operator must maintain a copy of the written asbestos survey report at the facility for at least two years. If the facility is unstaffed or if it is demolished, the owner/operator must maintain a copy at their regular place of business.

*Summary: Prior to any renovation or demolition of part or all of a school building, a complete survey must be performed to identify any ACM that may be present, including materials that are not accessible or readily visible. The survey must be conducted by a certified asbestos inspector to identify the type(s), location(s) and quantity of the ACM. The results of the survey must be provided in a written report, and will be incorporated into the Project Design.*

*The survey will include the collection of samples from each type of suspect material (minimum of 2, quantity depends on square/linear footage). The samples must be analyzed by a MA certified laboratory using approved methods and/or best available technology. The laboratory reports will be maintained in the management plan as part of the AHERA Response Action Records.*

## 2. What materials are “Suspect ACM”?

- Structures built before 1980 are very likely to contain some building materials that contain asbestos, including “snow-man” boilers encased with hand mixed and hand-applied plaster insulation; thermal system insulation on pipes and ductwork; sprayed-on fire-retardant insulation; vinyl-asbestos tile; asphalt roofing; and cement shingles. While there is a commonly held misperception that buildings constructed after 1980 do not contain asbestos, this is not true. After successfully enacting a number of individual product bans for asbestos-containing materials in the 1980s, the U.S. EPA adopted a regulation banning all asbestos-containing materials from use in commerce in 1989; however, this rule was struck down in 1991 by the US Court of Appeals for the 5<sup>th</sup> Circuit. While asbestos ores are no longer mined or processed in the United States, thousands of products containing asbestos continue to be produced, imported, legally sold in commerce, and commonly used in building construction and industrial applications requiring management of challenging environments (e.g. extreme temperature, electric voltage, friction/wear, exposure to weather, etc.).
- MassDEP’s definition of “Suspect ACM” includes any product reasonably likely to contain asbestos based on appearance, composition and use. A partial list of product categories that might contain asbestos is listed in the regulation. It includes, but is not limited to:
  - non-fiberglass insulation (e.g. pipe, boiler, duct work, etc.),
  - cement/transite shingles,
  - vinyl floor and wall tiles,
  - vinyl sheet flooring,
  - plaster, cement/transite pipes, cement sheets (corrugated and decorative),
  - ceiling tiles,
  - cloth vibration dampers or ductwork,
  - spray-on fireproofing,
  - mastic (flooring or cove base adhesive or damp proofing), and
  - asphalt roofing or siding materials (shingles, roofing felts, tars, etc.).

*Summary: Suspect materials that are not sampled and analyzed for asbestos content must be assumed to be ACM. The management plan must distinguish which suspect materials have been identified as ACM, which suspect materials have been identified as non-ACM, and which suspect materials are assumed ACM. Since imported materials may contain asbestos, these materials must be assumed ACM until sampling and analysis indicates the material content.*

## 3. Omitted

#### **4. Must all Suspect ACM be identified through sampling and analysis?**

- No. However, Suspect ACM that is not sampled and analyzed for the presence of asbestos must be handled and disposed of as if it were ACM (310 CMR 7.15 (4)(c)). Therefore, you may presume that Suspect ACM affected by a demolition/renovation project is ACM without sampling it, but the material must be identified as ACM in the survey report and managed according to all the applicable requirements of 310 CMR 7.15.

*Summary: Suspect ACM can be assumed ACM, and therefore must be treated as if it were ACM, which means all applicable state and federal regulations apply. Suspect ACM that is assumed ACM must be identified in the AHERA management plan.*

#### **5. If one analytical method indicates that suspect material contains less than 1% asbestos but another analytical method indicates that the material contains more than 1% asbestos, which method is considered definitive?**

- Any analytical result that identifies the presence of 1% asbestos or more triggers the requirement that the material be managed as ACM.

*Summary: Various methods are approved for the analysis of asbestos in bulk samples. Non friable organically bound materials, such as floor tiles, contain small thin fibers that may not be detected by less sensitive analytical methods. See the DLS guidance document on bulk sampling at <http://www.mass.gov/lwd/labor-standards/asbestos-safety/in-schools/3d-tips-for-consultants-bulk-sample-analysis-by-plm-march-2014-accessible.pdf>.*

#### **6. If a laboratory reports an analytical result of “Non-Detect” for a sample, do you have to follow up with a more definitive analytical protocol?**

- If you use a DLS-certified laboratory (<http://www.mass.gov/lwd/laborstandards/asbestos-program/license-lists/>), and the laboratory properly follows the U.S. EPA approved analytical method (EPA/600/R-93/116 July 1993) to analyze your sample, there is no need to re-sample or re-analyze the sample in question.

Please note: Appendix D of EPA/600/R-93/116 “Special Case Building Materials” suggests that for the dominantly non-friable materials covered by that Appendix, materials exhibiting characteristics of interfering binder/matrix, low asbestos content, or small fiber size may require additional sample treatment(s) and analysis beyond routine Polarized Light Microscopy (“PLM”). The Appendix provides examples of materials for which additional sample treatment and analysis should be considered: cementitious products (pipe, sheeting, etc.), viscous matrix products (adhesives, cements, coatings, etc.), vinyl materials (vinyl floor tile and sheeting), asphaltic roofing (shingles, roll roofing) and miscellaneous products (paints, coatings, friction plates, gaskets, etc).

*Summary: When a material is properly sampled (a minimum of 2 samples collected), and the sample is analyzed by Polarized Light Microscopy using the EPA/600/R-93/116 method, and all samples are determined to be “no asbestos detected”, further testing is not required. DLS recommends that any non friable organically bound materials, such as floor tiles, that were analyzed using earlier methods be re-analyzed using either the EPA/600/R-93/116 method or Transmission Electron Microscopy.*

*Any material that has been determined to contain greater than 1% asbestos by PLM shall not be reanalyzed to rebut the presence of asbestos. If a situation should arise where a material that previously tested positive for asbestos needs to be re-tested, such material shall be analyzed using quantitative TEM. DLS will not accept PLM analysis alone to rebut the presence of asbestos in a sample that previously tested positive for asbestos.*

## **Window Painting and/or Repair Work.**

### **1. Does MassDEP require that any disturbance of asbestos-containing window glazing and/or caulking compounds be done under “full” containment?**

• MassDEP has established specific requirements for window painting and repair work that will disturb glazing or caulking compounds containing 1% or more asbestos that include alternatives to full containment to prevent the release of asbestos fibers in the building and the exterior area around the jobsite [310 CMR 7.15(11)]. Be sure to check the regulation for the full list, but some important elements include:

- Close openings on the side of the building where work is being performed;
- Spread tarpaulins or plastic sheeting on ground below the work area;
- If an entire sash is to be removed, seal the window with plastic sheeting on the inside;
- Keep glazing compound and caulk adequately wet with amended water before removing it (Note: amended water means water with soap/surfactant added to prevent generation of visible dust);
- Keep all waste adequately wet. Collect waste and seal it in a leak-tight container, and dispose of it in accordance with requirements pertaining to packaging [310 CMR 7.15 (15)], transport [310 CMR 7.15 (16)], storage and disposal [310 CMR 7.15 (17)], and waste shipment records and reports [310 CMR 7.15 (18)].

*Summary: The above work practices are applicable to painting and/or repair work. Large scale window replacement projects in schools will require a project design specifying the means and methods, which may vary depending on the location of the windows (ground floor vs. upper levels). Include any site specific means and methods in the Project Design, and maintain a copy in the management plan.*

## **2. How do I handle a window glazing or caulking compound that contains less than 1% asbestos?**

- Window glazing or caulking compound containing less than 1% asbestos does not meet the definition of an “Asbestos-Containing Material (ACM)” and therefore its removal from a window is not subject to the work practice requirements for window painting and/or repair work described in the response to the “Window Section” Question 1 above. If you are disturbing window glazing or caulking compound containing less than 1% asbestos, you may still elect to follow these work practice requirements to minimize the risk of asbestos exposure to workers and members of the public.
- Waste that includes removed pieces of window glazing or caulking compound containing any amount of asbestos is classified as “Asbestos-Containing Waste Material (ACWM),” and must be managed in accordance with requirements pertaining to packaging [310 CMR 7.15 (15)], transport [310 CMR 7.15 (16)], storage and disposal [310 CMR 7.15 (17)], and waste shipment records and reports [310 CMR 7.15 (18)].

*Summary: Materials that contain less than 1% asbestos are not regulated by MassDEP or MA DLS. Even though the asbestos content is less than 1%, aggressive work practices that create dust may release asbestos fibers and increase the risk of exposure. The safe work practices specified in both MassDEP and MA DLS regulations are recommended to minimize the risk of asbestos exposure to workers and building occupants.*

## Guidance for Superintendents- General AHERA Requirements

Schools are required to maintain asbestos-containing materials in good condition, in accordance with the EPA's Asbestos-Containing Materials in Schools Rule, 40 CFR 763.80 through 763.99. This regulation is commonly known as "AHERA." The Massachusetts Department of Labor Standards administers and enforces AHERA for all K-12 schools in Massachusetts.

### Scope

AHERA applies to public and private not-for-profit elementary and secondary schools, K-12, including charter schools and schools with religious affiliation.

### General AHERA Requirements

Schools are required to 1) identify asbestos-containing materials in their buildings; 2) maintain asbestos-containing materials in good condition; 3) notify occupants; and 4) maintain records. This bulletin highlights the major requirements of the regulation. For specific details, refer to <http://www2.epa.gov/asbestos/school-buildings#resources>.

#### Identify Asbestos-containing materials :

- **Inspection:** Schools must be inspected by a licensed Asbestos Inspector to identify the presence and condition of any asbestos-containing materials (ACM).

For new construction the requirement for an initial asbestos inspection may be waived if a certification statement is available that documents there were no asbestos-containing materials specified or used in the building. The certification statement may be made by the architect, project engineer responsible for the construction of the new building, or by a licensed Asbestos Inspector after a review of construction documents. If no certification is available, a full AHERA inspection is required.

- **Reinspection:** A reinspection is required every three years. The inspection must be conducted by an accredited Asbestos Inspector. The school must maintain inspection and reinspection reports, including supporting laboratory reports.
- **Description of Asbestos-Containing Materials:** The school's Asbestos Management Plan must maintain a floorplan, diagram or written description of all asbestos-containing materials in a school.
  - Identity and description of material;
  - Whether the material is confirmed by testing, or assumed to contain asbestos;
  - Location and quantity of material;
  - Condition of material; and
  - Recommendations by a licensed Management Planner for maintenance or abatement of material.

## Maintain Asbestos-Containing Materials in Good Condition:

Materials must be maintained in good condition to prevent occupant and worker exposure to asbestos.

- **Appoint a Designated Person** to oversee that the AHERA requirements are met. The Designated Person must receive training.
- **Repair or Remove Damaged ACM.** Damaged ACM may be identified during a reinspection or periodic surveillance. Follow recommendations provided by your licensed Management Planner after each 3-year reinspection.
- **Implement an Asbestos Management Plan.** A Management Plan must be developed by a Massachusetts licensed Management Planner, and is based on the inspection conducted by a licensed Asbestos Inspector. If there is no ACM present in your building, a Management Plan is still required.
- **Implement an Operations and Maintenance Program.** The O&M program provides specific procedures and work practices for routine maintenance and repair operations which may disturb asbestos and for the clean-up of minor asbestos spills.
- **Provide O&M Equipment.** Depending upon the type of ACM in your school, HEPA vacuums, wet mopping, and other equipment may be required.
- **Train Custodians and Maintenance Staff:** a 2-hour Asbestos Awareness training is required for custodians who work in the vicinity of ACM; a 16-hour Operations and Maintenance training is required for maintenance and trades personnel who may disturb asbestos.
- **Conduct periodic surveillance every six months** to monitor condition of ACM.
- **Hire licensed Asbestos Contractors and Consultants.**

## Notify Occupants:

- **Post warning signs** in custodial and maintenance areas where ACM is present.
- **Notify custodians and maintenance staff** of the types and locations of ACM.
- **Notify vendors and contractors** who may disturb ACM, of the presence of ACM in their work area (i.e. Plumbers, heating contractors, computer contractors). A sample is enclosed and posted at [www.mass.gov/dols/ahera](http://www.mass.gov/dols/ahera).
- **Distribute an annual notification** to all building occupants regarding the availability of the management plan. (a sample notification is enclosed and posted at [www.mass.gov/dols/ahera](http://www.mass.gov/dols/ahera))

## Maintain Records:

The school shall maintain and update its Management Plan to keep it current, including:

- Asbestos Abatement records and clearance air sampling reports.
- O&M Activities: maintain documentation in the Management Plan.
- Periodic Surveillance: maintain documentation in the Management Plan.
- Bulk Sampling Reports.

For more information about AHERA, please visit: [www.mass.gov/dols/ahera](http://www.mass.gov/dols/ahera), or contact Janet McKenna at 617-626-5673 with any questions or concerns.

## **AHERA MANGAMENT PLANS REQUIREMENTS FOR NEW SCHOOLS FREQUENTLY ASKED QUESTIONS**

Asbestos Hazard Emergency Response Act (“AHERA”) regulations still apply to new construction. Even if there is no asbestos in your school, a limited Management Plan is still required.

### **What must be included in a management plan for a new school?**

A management plan for a new school must contain the following information:

1. The Architect statement indicating that, to the best of their knowledge, no asbestos containing materials were specified or used in the construction.
2. The Designated Person statement. Even if all the schools are new construction, a Designated Person must be appointed and trained to ensure that the applicable Local Education Agency (“LEA”) responsibilities are fulfilled.
3. Dated copies of the annual notification to building occupants regarding the availability of the management plan, and the method of notification.

### **Do the maintenance and custodial staff members need asbestos awareness training?**

Training is required for any maintenance and custodial staff who work in a building that contains asbestos materials, or materials that are assumed to be asbestos containing. Employees who work exclusively in a new school are not required to have the asbestos awareness training. However, if maintenance staff members will be assigned to older schools on occasion, they must receive the awareness training. Training rosters or certificates of training completion must be kept in the management plan.

### **Can I obtain an architect statement for an addition?**

When a newly constructed addition is made to an existing building, an architect statement for the building materials in the addition should be obtained. This means that only the new addition will be exempt from reinspections and periodic surveillance.

### **Can I obtain an architect statement for a renovation?**

During a renovation that does not involve total demolition of the existing structure, the renovation may not include a complete removal of all existing asbestos materials. The scope of work and project design must be carefully reviewed to verify whether all the asbestos materials were identified and removed.

A thorough pre-renovation inspection, called a NESHAP (National Emissions Standard for Hazardous Air Pollutants) inspection is required, which involves sampling of all suspect materials. This type of inspection differs from the AHERA inspection since it typically requires destructive sampling to penetrate layers of walls, floors, ceilings, etc. that may not be visible or accessible. The purpose of the NESHAP inspection is to identify all suspect materials that may be impacted during the renovation. Failure to identify all the ACM may result in a fiber release episode that can create extensive contamination inside and outside the school building, including fiber migration into occupied spaces.

An architect statement can be obtained for the newly installed materials that states to the best of their knowledge, no asbestos containing materials were specified or used during the renovation. There may still be existing ACM in crawl spaces or pipe chases, in window caulk or glazing, in waterproofing materials or roofing materials remaining in the renovated space.

**Is a three year reinspection and periodic surveillance required after a renovation?**

A three year reinspection and periodic surveillance are required as long as ACM or assumed ACM remains in a school building. This means that if the renovation records reflect that all ACM has been identified and removed, reinspection and periodic surveillance are not required. However, if any ACM remains in the school building, the reinspections and periodic surveillance must continue every three years. Not all renovations require complete removal of asbestos materials, but involve removal of only the asbestos that will be impacted as part of the renovation, such as a boiler replacement or upgrading building systems.

A careful evaluation should be done of the following documents regarding the removal of all the ACM in the school:

- The pre-renovation NESHAP survey: Review the results of the bulk sampling performed, including the location of samples, the number and location of samples. The survey may be limited to only the area of the building undergoing renovation, and not the entire building.
- The project design: This will specify the means and methods of the removal, the amounts of ACM to be removed, and the locations of removal. The project design may not indicate the removal of all the ACM in the school building.

**Do new materials need to be sampled and analyzed for the presence of asbestos?**

Materials that are newly installed as part of a renovation or addition may be exempted from reinspection and periodic surveillance if an architect statement is obtained. Schools should be aware that imported building products may contain asbestos, particularly floor tiles. Try to obtain a manufacturer's product information sheet on suspect materials such as ceiling tiles and floor tiles.

Samples can be collected and analyzed at any time if the school determines such testing is warranted. Best practices would include a minimum of three samples collected in a randomly distributed pattern that is representative of the entire homogeneous area being sampled. A material is considered homogeneous if it is of similar color, size, texture and time of application. Several different homogeneous areas of floor tiles and ceiling tiles are typically present in most school buildings.

All laboratory reports for bulk sample analysis must be kept in the management plan.

## FIBER RELEASE EPISODE GUIDANCE FOR THE DESIGNATED PERSON

A **fiber release episode**, as defined by AHERA 40 CFR 763.83, means any uncontrolled or unintentional disturbance of ACM resulting in a visible emission. The Department of Labor Standards further describes Major and Minor Fiber Release Episodes in 453 CMR 6.02.

The use of best practices when responding to a fiber release episode will ensure that building occupants are protected and that the fiber release episode is promptly and effectively remediated.

A **minor** fiber release involves the disturbance of three or fewer square or linear feet of asbestos containing material. A **major** fiber release involves the disturbance of greater than three square or linear feet of asbestos. Hiring an Asbestos Contractor to clean any debris generated, and repair or remove damaged asbestos is the preferred method for responding to a fiber release episode.

The Designated Person should assess the situation, and contact the asbestos consultant who provides asbestos inspection and project monitoring services to the school district. A list of certified consultants can be found on the DLS website, [www.mass.gov/dols](http://www.mass.gov/dols), under Asbestos Analytical Services. A project design, or work plan, may be necessary depending on the amount of asbestos disturbed.

The initial steps that the Designated Person should take to protect building occupants include:

1. Isolating the area. Restrict access to the area by the general public. Foot traffic through the area can spread the extent of contamination to clean areas of the building.
2. Post warning signs at all access point to the area. Signs should be large and readily visible. Signs should indicate: Restricted Area. Asbestos Hazard. No unauthorized access. No entry without proper training and equipment.
3. Modify or shut down the air handling system to prevent the distribution of airborne asbestos fibers to unaffected areas of the building.
4. Contact the asbestos consultant to evaluate the situation and assist the Designated Person in developing a remediation strategy. The strategy may include bulk sampling, air sampling and wipe sampling.
5. Contact the asbestos contractor to clean visible debris, and remove or repair

## FIBER RELEASE EPISODE

Date(s) episode occurred: \_\_\_\_\_

Name of School: \_\_\_\_\_

School Address: \_\_\_\_\_

Location where the episode occurred (include room number or clear designation of the area): \_\_\_\_\_  
\_\_\_\_\_

Describe the episode (include types and amount of asbestos involved):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Preventive measures used to protect building occupants:

- Isolate the area-Restrict entry
- Post warning signs
- Modify HVAC if needed
- Asbestos Contractor if needed
- Cleanup the contaminated area with HEPA vacuum or wet methods
- Air testing performed, if needed

Describe the Corrective Action taken:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of person performing the corrective action: \_\_\_\_\_

Date corrective action was completed: \_\_\_\_\_

*Signing this form acknowledges that the person performing this activity has the proper training, equipment and authorization to so.*

## OPERATIONS & MAINTENANCE ACTIVITY

*School personnel may perform Operations & Maintenance activities in the school building pursuant to 40 CFR 763.91(d) and 40 CFR 763 Appendix B to subpart E, Work Practices and Engineering Controls for Small Scale, Short Duration Operations and Repair (O&M) Activities Involving ACM.*

Name of School: \_\_\_\_\_

School Address: \_\_\_\_\_

Location where work was performed (include room number or clear designation of the area): \_\_\_\_\_

\_\_\_\_\_

Describe the work (include types and amount of asbestos involved):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Preventive measures used to protect building occupants:

- Isolate the area-Restrict entry
- Post warning signs
- Modify HVAC if needed
- Work practice controls:
  - Remove moveable objects
  - Cover non-moveable objects
  - Plastic on floor
  - Mini enclosure, glovebag
- PPE used-disposable suit and respirator
- Cleanup the immediate work area with HEPA vacuum or wet methods

Date(s) work was performed: \_\_\_\_\_

Name of person performing the work: \_\_\_\_\_

Signature of person performing the work: \_\_\_\_\_

*Signing this form acknowledges that the person performing this activity has the proper training, equipment and authorization to disturb three linear or square feet of asbestos containing materials.*

## TIPS ON ORGANIZING AND MAINTAINING THE AHERA MANAGEMENT PLAN

The Asbestos Management Plan is essentially a voluminous collection of documents and records that will continue to increase over time. The plan is a living document that must be routinely updated.

To maintain a complete, updated copy of the AHERA management plan, use a binder with the following sections:

1. **Designated Person information:** the appointment of the Designated Person, the signed Designated Person statement, any training certificates received.
2. **Training documentation:** training roster or certificates for each member of the maintenance and custodial staff.
3. **Annual notifications:** dated copies of each annual notification and the method of notification.
4. **Outside contractor notifications:** copies of signed outside contractor notifications and method of notification.
5. **Operations & Maintenance Activities:** documentation of any small repairs that are performed by school staff. Include the location of the work, date of work, description of what was done, the protective measures used, the name and signature of the person performing the work.
6. **Fiber Release Episodes:** when asbestos is accidentally disturbed or dislodges, the school must take steps to clean up and decontaminate the area. Fiber release episodes can be major (three feet or greater) or minor (less than three feet). You will need to document the area where the release occurred, the methods used to contain the area, methods used to clean, repair and/or remove asbestos, the asbestos contractor logs, air test reports (if any), project design (if a major fiber release), and waste shipment record if asbestos is removed.
7. **Response Action records:** for each time that asbestos is removed or repaired, you will need the asbestos contractor logs, the final air clearance reports, the project monitor logs, the project design (if the work involves greater than 3 linear or square feet), the waste shipment record and a copy of the ANF notification submitted to the state.
8. **Reinspection Reports:** copies of the three-year reinspection reports. At a minimum, the most recent three year reinspection report should be maintained in the binder. If older reinspection reports are maintained elsewhere, include a note that these reports are available upon request.
9. **Bulk Sample Reports:** The laboratory reports for any suspect materials that were sampled and analyzed for the presence of asbestos, including the name of the laboratory, name of analyst, date of analysis, and a breakdown of the contents of the sample. You should also obtain the chain of custody indicating the number of samples collected, the locations of samples, the date of collection, name, signature and certification number of the person collecting the samples.

The Initial Inspection and Management Plan was prepared in 1988-1989. Many schools are no longer able to locate the original plan due to changes in administration and office relocations. Every three years thereafter, schools were required to conduct a reinspection. Any reinspection reports are considered part of the management plan, including past years (2002, 2005, 2008, 2011).

Some schools choose to post their management plan on the school website. Electronic records are permissible as long as a true copy of the originals can be accessed quickly, especially in an emergency, such as a fiber release episode, to identify which materials are asbestos containing or presumed asbestos containing materials.

## **PROJECT DESIGNS FOR ASBESTOS ABATEMENT AND COMPLIANCE WITH THE ASBESTOS HAZARD EMERGENCY RESPONSE ACT (“AHERA”)**

### ***What is a Project Design?***

A Project Design, as opposed to a project specification, will emphasize how the work is to be conducted and will include the specifics of the abatement plan tailored to a particular building. No two Project Designs should be exactly alike because the specifications must be adapted to the site parameters. Sometimes referred to as Means and Methods Specifications, the Project Design will specify the types, quantities and locations of asbestos containing materials (“ACM”) to be removed, the method of removal of each type of ACM, and method of transport of the asbestos containing waste from the point of generation within the facility to the storage location.

A specification submitted by a contractor as part of a proposal or contract, particularly one focused on deliverables, such as the work to be performed and the coverings to be abated, is not necessarily a Project Design. Specifications containing generic information pertaining to safety and health programs, and the reiteration of regulatory requirements not tailored to a specific site, will not be considered a Project Design.

### ***When is a Project Design required?***

A Project Design must be prepared for all Asbestos Response Actions conducted in AHERA facilities in advance of the work being carried out. Asbestos Response Actions, commonly termed “Asbestos Abatement Projects”, involve more than three linear or square feet of material (or more than the amount of material that can be contained by a single asbestos glove bag).

The Local Education Agency (“LEA”) would need to carry out renovation or repair work as Response Actions when more than threshold amounts of asbestos materials are disturbed.

The cleanup of asbestos spills involving the release of more than three square or linear feet of asbestos material (or more than the amount that can be contained by a single asbestos glove bag) - called “Major Fiber Release Episodes” in AHERA – must be conducted as Response Actions.

DLS does not require that a Project Design be prepared for abatement projects conducted in non-AHERA facilities.

### ***What must be included in a Project Design?***

A Project Design will tailor the general specifications to the particular building. This may require communication between the Project Designer and the Asbestos Contractor, the architect and the General Contractor. A Project Design must address some key elements:

- if the building will be occupied or unoccupied, and any special precautions instituted if the building is occupied, such as additional air filtration units
- if work will occur only during nights and weekends, which may increase the amount of time needed for completion of the abatement
- if the work will occur in phases, a description of each phase including the types, locations and amounts of ACM that will be removed, the method(s) of removal, and method of clearance air sampling.
- if there are special considerations that must be explored, such as the effects of extreme heat or cold on the integrity of the containment and critical barriers.
- if gas or propane fueled equipment will be used within the containment barriers (carbon monoxide hazard).
- if noxious fumes will be generated within the containment barriers as a result of solvents or chemicals used during the abatement (chemical hazard).
- if cutting torches will be used within the containment barriers (fire hazard).
- if there are penetrations within the containment barriers, such as floor penetrations for pipes, which may act as a conduit for air and water.
- if portions of any building systems will be affected, such as fire alarm systems, electrical systems subject to lock out/tag out, portions of the HVAC system that must be shut down or sealed off.
- the locations where background air samples will be collected.
- the type of replacement materials, if any, specified as non asbestos containing.

From a technical standpoint, “state of the art” means, methods and equipment should be employed. Regulatory requirements should be viewed as minimal requirements, as regulations rarely keep pace with the evolving industry advances and technology.

### ***Who prepares the Project Design?***

Any Project Design must be prepared by a certified Asbestos Project Designer. The Project Designer must complete the required training course and possess a current Project Designer license issued by DLS.

Due to the potential exposure risks that may result from improperly designed abatements in schools, the Project Designer is responsible for modifications of the guide specifications, and may need to consult with the architect or asbestos contractor. The Project Designer must sign his/her name to the design, and include the current Project Designer license number.

### ***Is a Project Design required to be in writing?***

A Project Design is required in advance of the work being performed. When a Project Design is not presented in writing, compliance with the design may be unsuccessful. Local Education Agencies should require a comprehensive written Project Design that is based on the results of a thorough building inspection performed pursuant to the National Emissions Standard for Hazardous Air Pollutants (“NESHAP”), 40 CFR Part 61, Subpart M. The NESHAP inspection will identify types, amounts and locations of asbestos materials in the areas that will be subject to renovation or demolition. The Local Education Agency should not rely on previous AHERA reinspection reports, which may be incomplete or outdated.

Regardless of the size of the job, whether it is public or private, a written set of project specifications is essential for any asbestos abatement project. The Project Design that has been adapted to the site parameters will require less subjective interpretation than general standard specifications.

A Project Design that is prepared prior to the start of the response action will facilitate the bidding process, and minimize change orders once the project is underway. It is also confirmation to the Local Education Agency of AHERA compliance with 40 CFR 763.90(g) and with Massachusetts regulatory requirements in 453 CMR 6.07.

### ***What other agencies may require a Project Design?***

In addition to the Asbestos NESHAP and AHERA regulations, asbestos activities are also governed by the MA Department of Labor Standards under 453 CMR 6.00, the MA Department of Environmental Protection under 310 CMR 7.00 and OSHA Construction Standard for Asbestos under 29 CFR 1926.1101. The federal and state regulations are not mutually exclusive, and multiple regulations may apply concurrently. Many state regulations are more stringent than the federal laws. Contact a representative at each specific agency for clarification on their requirements. The DLS website, [www.mass.gov/dols](http://www.mass.gov/dols), can provide additional guidance documents.

## AHERA RESPONSE ACTION RECORDS CHECKLIST

Local Education Agency (LEA): \_\_\_\_\_

LEA Designated Person: \_\_\_\_\_

Name of School: \_\_\_\_\_

Address: \_\_\_\_\_

### **Description of Response Action/Project Design:**

- Methods used
- Location of response action
- Start date
- Completion date

### **Project Designer**

- Name
- Certification number

### **Contractors and Workers Conducting Asbestos Activity**

- Name
- Address
- Certification number
- Name and location of storage/disposal site (attach waste shipment records)

### **Clearance Documentation**

- Date a visual inspection was conducted
- Name of person performing the visual inspection
- Air samples were collected at completion of response action using aggressive methods
- Name and signature of person collecting air samples
- Certification number of project monitor collecting samples
- Date of collection
- Locations where samples were collected
- Air samples were analyzed by an accredited laboratory
- Laboratory name
- Laboratory certification (NVLAP, AIHA, or Massachusetts certification number)
- Method of analysis
  - Phase Contrast Microscopy (PCM)  
(Chain of custody must show 5 samples plus one blank for each batch submitted)
  - Transmission Electron Microscopy (TEM)  
(Chain of custody must show 13 samples submitted for each batch)
- Name and signature of analysts
- Results of analysis (attach lab report)

## AHERA RESPONSE ACTION RECORDS CHECKLIST

### Attachments:

- Project Design
- Sign in logs from Asbestos Contractor for each day of the project
- Daily logs from project monitor/consulting firm
- Chain of custody for any air samples collected
- Laboratory reports for final air clearance
- Waste shipment record

### Update to Asbestos Management Plan After Completing a Response Action

- Copies of all Response Action Records in both copies of the school's Management Plan, at the LEA administrative office and at the school.
- Detailed description of the locations of any Asbestos-Containing Building Material (ACBM) or suspect ACBM which remains in the school once the Response Actions are undertaken.
- Revisions to the Operations and Maintenance Program if the Response Action results in the removal of asbestos that had required special cleaning, maintenance, or precautions.
- A re-evaluation of resources needed to manage in place the Asbestos-Containing Material (ACM) that remains in the building.

*This checklist is provided as a courtesy by the Massachusetts Department of Labor Standards, to assist a Local Education Agency (LEA) with ensuring that the LEA's records are complete following an AHERA Response Action. This AHERA Response Action Checklist is **not** intended to provide a detailed overview of the AHERA regulations and should not be used as a substitute for such review. For questions and more information about AHERA, please visit [www.mass.gov/dols/AHERA](http://www.mass.gov/dols/AHERA).*

# Sample RFP Specs for AHERA Re-Inspection and Management Plan Updates

## Sample RFP Specifications for an LEA's Professional Services Contract for AHERA reinspection and management plan update

*Note: The following specifications are designed to assist the Local Education Agency (LEA) when developing a public bid for AHERA three-year reinspections and management plan revisions. The goal of these model specifications is to assist the LEA in limiting the number of deficiencies typically observed during AHERA audits, and promote due diligence on the part of the consultant(s) when conducting inspections and reviewing Asbestos Management Plans. Please be advised that these specifications do not address the procurement requirements of G.L. chapter 30B or other legal requirements. The awarding authority should consult the Office of the Inspector General (617-722-8852) and the Inspectional Services Division (617-720-3139) with questions regarding procurement of services and related legal requirements.*

**Scope of Work:** to conduct a 3-year reinspection and update the management plan to ensure compliance with 40 CFR 763, subpart E to Appendix C, Asbestos Hazard Emergency Response Act (AHERA).

1. The firm selected will submit to the awarding authority:

a) a copy of the licenses of all employees of the firm who are authorized to conduct reinspections and develop management plans in Massachusetts.

b) a copy of any citations or violations issued to the firm or any of its employees who are authorized to conduct reinspections and develop management plans in Massachusetts.

c) a copy of professional liability insurance for errors and omissions in the amount of \$1 million to cover the Asbestos Inspectors and Asbestos Management Planners in its employ

d) a copy of the firm's business certificate indicating that the firm is in good standing

2. The firm will assign only those consultant(s) who are bona-fide employees of said firm to perform the functions specified under this RFP. Any consultant(s) assigned to provide services under the terms of the contract must hold a valid, current license in the appropriate discipline(s) issued by the authorized Massachusetts agency.

3. Upon arrival, and prior to initiating the reinspection, the Asbestos Inspector(s) shall present to the Designated Person, a current, valid form of identification and a current, valid Asbestos Inspector license issued by the authorized Massachusetts agency.

4. The reinspection shall be performed pursuant to 40 CFR 763.85(4)(b)(3)(i) through (vii), and at a minimum, the consultant(s) shall:

- Visually reinspect and reassess, under 763.88, the condition of all friable known or assumed Asbestos-Containing Building Material (ACBM).
- Visually inspect materials that was previously considered nonfriable ACBM and touch the material to determine whether it has become friable since the last inspection or reinspection
- Identify any homogeneous areas with material that has become friable since the last inspection or reinspection.
- (Optional-upon request of LEA) Collect bulk samples and submit the samples for analysis in accordance with 763.86 and 763.87 for each homogeneous area of newly friable material that is already assumed to be ACBM. All samples will analyzed by a laboratory with current NVLAP (National Voluntary Laboratory Accreditation Program) accreditation.

**5.** The reinspection report will clearly indicate the date of inspection, and shall be signed by each inspector and/or management planner who contributes to the reinspection and the review or revision of the management plan.

**6.** The reinspection report will identify homogeneous areas consistent with the terms and intent of AHERA. For the purpose of satisfying the scope of work under this RFP, only materials that are uniform in color, texture and size will be considered homogeneous.

**7.** The firm will submit the reinspection report in a user-friendly document that, when reviewed by parents, teachers or other interested parties, will clearly identify the types, locations, amounts and condition of the following:

- any ACBM that is assumed to be ACM,
- any material that was sampled and determined to be non-asbestos containing, and
- any material that was sampled and determined to be ACM

**8.** The firm will submit a reinspection report and revised management plan that is consistent with the industry standard and demonstrates a state of the art work product that reflects current technology and best practices.

**9.** The firm will submit the reinspection report to the LEA within 30 days of the inspection, for inclusion into the updated management plan.

**10.** The firm shall ensure that response action(s) recommendations described in the management plan are specific to the site and to the ACBM involved, and that the implementation schedule is clear.

**11.** The firm shall assign its properly licensed consultant(s) to review the management plan, any previous inspection or reinspection report(s) and any response action records to verify that the quantities and locations of ACM are updated.

**12.** The firm shall assign its properly licensed consultant(s) to update the management plan to verify that all AHERA required elements are present, pursuant to 763.93(e)(1) through (12).

**13.** The firm shall assign its properly licensed consultant(s) to verify that all recordkeeping requirements are met, pursuant to 763.94, including:

- A current designated person statement
- Dated copies of annual notifications and method of notification\*
- Training records
- Periodic surveillance records
- Response action records
- Outside contractor notification\*

The firm shall notify the LEA which, if any, of these documents are missing from the management plan.

*\*The firm will consult with the Designated Person on methods to be used by the LEA for annual notification and outside contractor notification, so that the plan reflects the actual methods employed by the LEA.*

**14.** The firm shall assign its properly licensed consultant(s) to review the adequacy of the Operations and Maintenance Program (O&M) and make updates or revisions as necessary. The firm shall ensure that the O&M program is site- specific, and incorporates best practices and/or industry standards for the in-place management of the types, amounts, locations and condition of the ACBM identified or assumed to be present in each school building. The firm shall ensure that any analytical reports for bulk sample analysis are included in the O&M program.

As part of the O&M Program, the firm shall provide an updated evaluation of resources needed to complete response actions successfully and carry out reinspection, operations and maintenance activities, periodic surveillance and training.

**15.** The firm shall assign its properly licensed consultant(s) to provide response action recommendations that are consistent with AHERA pursuant to 763.93(b) through (f).

**16.** The firm will advise the LEA, in writing, of any non-compliance that is within the LEAs authority to correct, including but not limited to:

- Failure to designate a person to ensure AHERA requirements are fulfilled
- Failure to train the designated person or maintenance/custodial personnel
- Failure to implement a response action
- Failure to post warning labels adjacent to friable and nonfriable ACM in routine maintenance areas, and if the signs are not readily visible upon entry and read as required under AHERA.

**17.** The firm will provide two complete copies of the reinspection report and updated management plan for each school within the LEA.